THE HON'BLE SRI JUSTICE GHULAM MOHAMMED

CMA No.940 OF 2005

Between

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Oral Judgment :

1) This appeal by the insurance company against the award dated 29-9-2004 in O.P.No.268 of 1999 passed by the Motor Accidents Claims Tribunal-cum-Additional District Judge, Anantapur.

2) The details necessary for deciding this appeal are that the deceased along with his friend went to Goa from Proddatur to purchase various video cassettes and after purchasing cassettes they engaged with a lorry bearing no.AP 21-U-1427 which was already loaded with Urea bags and kept the cassettes box on Urea bags and while the lorry was reaching Marnepalli cross roads on 15-5-1995 at5 a.m. on Guntakal to Gooty road, the lorry was driven by its driver in rash and negligent manner as a result of which the lorry turned turtle and the driver and friend of the deceased sustained injuries and that the deceased who was sitting near Video cassettes box died instantaneously there itself as the urea bags were fallen on him. The claimants filed the above O.P. seeking compensation of Rs.1,50,000/-The Tribunal on consideration of the evidence while holding that the driver of the lorry drove it in rash and negligent manner resulting death of the deceased, granted an amount of Rs.1,13,300/- as compensation against the owner and insurer of the lorry involved in the accident payable jointly and severally by them..

3) Learned Standing Counsel for the appellant-insurance company relying on the decision of the

Supreme Court reported in NEW INDIA ASSURANCE CO. LTD v. ASHA RANI ( (1) 2003 (1) ALT 35 (SC) ), contended that as per the policy conditions, if a person is travelling in a vehicle unauthorisedly, the insurance company is not liable to pay the compensation. It is submitted by the learned Standing Counsel that the deceased died while travelling in a urea loaded lorry which turned turtle, and the fact remains is that the deceased along with others was traveling in the lorry unauthorisedly.

5) Recording the submission of the learned standing counsel, the appeal is allowed in part in terms of the judgment of the Supreme Court reported in ASHA RANI's case (supra) holding that the insurance company is not liable to pay the compensation amount and that if any amount is paid the same can be recovered from the owner of the vehicle.

GM, J

Kk/24-9-2010

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